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SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

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U.S. Securities and Exchange Commission  
Office of FOIA Services  
100 F Street N.E.  
Washington, DC 20549-2736

Extension: Business Conduct Standards for Security-Based Swap Dealers and Major Security-Based Swap Participants

SEC File No. 270-792; OMB Control No. 3235-0739

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (“PRA”) (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission (“Commission”) is soliciting comments on the collection of information provided for in Business Conduct Standards for Security-Based Swap Dealers and Major Security-Based Swap Participants.<sup>1</sup> (17 CFR 240.3a67-10, 240.3a71-3, 240.3a71-6, 240.15Fh-1 through 15Fh-6 and 240.15Fk-1), under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.). The Commission plans to submit this existing collection of information to the Office of Management and Budget (“OMB”) for extension and approval.

In 2010, Congress passed the Dodd-Frank Act, establishing a comprehensive framework for regulating the over-the-counter swaps markets. As required by Title VII of the Dodd-Frank Act, new section 15F(h) of the Exchange Act established business conduct standards for

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<sup>1</sup> Business Conduct Standards for Security-Based Swap Dealers and Major Security-Based Swap Participants, Exchange Act Release 77617 (Apr. 14, 2016), 81 FR 29959 (May 13, 2016). See also Business Conduct Standards for Security-Based Swap Dealers and Major Security-Based Swap Participants; Correction, Exchange Act Release 77617A (May 19, 2016), 81 FR 32643 (May 24, 2016). (together, ‘the Business Conduct Rules for SBSDs and MSBSPs’ or “BCS Rules”)

security-based swap (“SBS”) Dealers and Major SBS Participants (“collectively “SBS Entities”) in their dealings with counterparties, including special entities. In 2016, in order to implement the Dodd-Frank Act, the Commission adopted the BCS Rules for SBS Dealers and Major SBS Participants,<sup>2</sup> a comprehensive set of business conduct standards and chief compliance officer requirements applicable to SBS Entities, that are designed to enhance transparency, facilitate informed customer decision-making, and heighten standards of professional conduct to better protect investors.<sup>3</sup>

Rules 15Fh-1 through 15Fh-6 and 15Fk-1 require SBS Entities to:

- Verify whether a counterparty is an eligible contract participant and whether it is a special entity;
- Disclose to the counterparty material information about the SBS, including material risks, characteristics, incentives and conflicts of interest;
- Provide the counterparty with information concerning the daily mark of the SBS;
- Provide the counterparty with information regarding the ability to require clearing of the SBS;
- Communicate with counterparties in a fair and balanced manner based on principles of fair dealing and good faith;
- Establish a supervisory and compliance infrastructure; and
- Designate a chief compliance officer that is required to fulfill the described duties and provide an annual compliance report.

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<sup>2</sup> Id.

<sup>3</sup> Commission staff has prepared separate supporting statements pursuant to the Paperwork Reduction Act (“PRA”) regarding final Rule 3a71-3(c) and Rule 3a71-6, which address the cross-border application of the business conduct standards and the availability of substituted compliance. The Office of Management and Budget (“OMB”) has assigned control number 3235-0717 to Final Rule 3a71-3(c) and 3235-0715 to Final Rule 3a71-6. Final Rule 3a67-10(d) is a definitional rule and does not have a PRA burden associated with it. Rules 3a71-3(a), Rule 15Fh-1 and Rules 15Fh-2(b) and (c) address scope of the rules and definitions and so do not have PRA burdens associated with them.

The rules also require SBS Dealers to:

- Determine that recommendations they make regarding SBS are suitable for their counterparties.
- Establish, maintain and enforce written policies and procedures reasonably designed to obtain and retain a record of the essential facts concerning each known counterparty that are necessary to conduct business with such counterparty; and
- Comply with rules designed to prevent “pay-to-play.”

The rules also define what it means to “act as an advisor” to a special entity, and require an SBS Dealer who acts as an advisor to a special entity to:

- Make a reasonable determination that any security-based swap or trading strategy involving a security-based swap recommended by the SBS Dealer is in the best interests of the special entity whose identity is known at a reasonably sufficient time prior to the execution of the transaction to permit the SBS Dealer to comply with this obligation; and
- Make reasonable efforts to obtain such information that the SBS Dealer considers necessary to make a reasonable determination that a security-based swap or trading strategy involving a security-based swap is in the best interests of the known special entity.

In addition, the rules require SBS Entities acting as counterparties to special entities to reasonably believe that the counterparty has an independent representative who meets the following requirements:

- Has sufficient knowledge to evaluate the transaction and risks;
- Is not subject to a statutory disqualification;
- Undertakes a duty to act in the best interests of the special entity;
- Makes appropriate and timely disclosures to the special entity of material information concerning the security-based swap;
- Evaluates, consistent with any guidelines provided by the special entity, the fair pricing and the appropriateness of the security-based swap;
- Is independent of the security-based swap dealer or major security-based swap participant that is the counterparty to a proposed security-based swap.

Under the rules, the special entity's independent representative must also be subject to pay-to-play regulations, and if the special entity is an ERISA plan, the independent representative must be an ERISA fiduciary.

The information that must be collected pursuant to the BCS Rules is intended to increase accountability and transparency in the market. The information will therefore help establish a framework that protects investors and promotes efficiency, competition and capital formation.

Based on a review of recent data, as of 2018, the Commission estimates the number of respondents to be as follows: 50 SBS Dealers, 5 Major SBS Participants, for a total of 55 "SBS Entities".<sup>4</sup> Further, we estimate that approximately 46 of these 55 SBS Entities will be dually registered with the CFTC as Swap Entities. We also estimate that there are currently 13,137 security-based swap market participants of which 8,802 are also swap market participants. In 2018, there were approximately 593,364 security-based swap transactions between an SBS Dealer and counterparty that is not an SBS Dealer of which 233,595 were new or amended trades. The Commission estimates there are 370 independent, third-party representatives and 20 in-house independent representatives.<sup>5</sup> We estimate that there are approximately 13,706 unique SBS Dealer and non-SBS-Dealer pairs. We have used these estimates in calculating the hour and cost burdens for the rule provisions that we anticipate have a "collection of information" burden within the meaning of the PRA.

The Commission estimates that the aggregate burden of the ongoing reporting and disclosures required by the BCS Rules, as described above, is approximately 554,823 hours and \$2,138,000 calculated as follows:

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<sup>4</sup> Unless otherwise noted, estimates were derived from the DTCC-TIW data set (February 2019).

<sup>5</sup> See, Exchange Act Rule 15Fh-5.

Section		Type of Burden	Respondents	Ongoing Annual Burden	Ongoing Annual Burden	Industry-wide Annual Burden	Industry-wide Annual Burden
				Hours	Cost	Hours	Cost
15Fh-3(b), (c), (d)	Disclosures - SBS Entities	Reporting	55	4,120	\$0	226,600	\$0
15Fh-3(b), (c), (d)	Disclosures - SBS Transactions Between SBS Dealer and Non-SBSD Counterparty	Reporting	233,595	1	\$0	233,595	\$0
15Fh-3(e), (f)	Know Your Counterparty and Recommendations (SBS Dealers)	Reporting	50	137	\$0	6,853	\$0
15Fh-3(g)	Fair and Balanced Communications	Reporting	55	2	\$3,600	110	\$198,000
15Fh-3(h)	Supervision	Reporting	55	540	\$4,800	29,700	\$264,000
15Fh-5	SBS Entities Acting as Counterparties to Special Entities	Reporting	55	390	\$0	21,450	\$0
15Fh-5	SBS Entities Acting as Counterparties to Special Entities	Third-Party Disclosure	55	390	\$0	21,450	\$0
15Fh-6	Political Contributions	Reporting	50	1	\$25,600	50	\$1,280,000
15Fk-1	Chief Compliance Officer	Reporting	55	273	\$7,200	15,015	\$396,000.00
	<b>Total</b>					<b>554,823</b>	<b>\$2,138,000</b>

Written comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

Please direct your written comments to: Charles Riddle, Acting Director/Chief Information Officer, Securities and Exchange Commission, c/o Candace Kenner, 100 F Street, NE Washington, DC 20549, or send an e-mail to: [PRA\\_Mailbox@sec.gov](mailto:PRA_Mailbox@sec.gov).

Jill M. Peterson  
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Dated: April 17, 2019

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